



Congress of the United States
House of Representatives
Washington, DC 20515

January 15, 2019

The Honorable John H. Durham
United States Attorney
U.S. Attorney's Office for the District of Connecticut
Department of Justice
157 Church Street, Floor 25
New Haven, CT 06510

Dear Mr. Durham:

In October 2017, the House Committees on Judiciary and Oversight and Government Reform began investigating decision-making and actions at the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) in the context of the 2016 Presidential Election.¹ The conduct of DOJ personnel, largely at the FBI, during this time departed from the norms of impartial justice and fairness that Americans expect from these institutions. As we uncovered more facts during our oversight, we became concerned investigative and prosecutorial decisions may have been influenced by political bias. We know the DOJ and FBI departed from traditional investigative and prosecutorial practices, and insufficiently adhered to the Foreign Intelligence Surveillance Act (FISA).² The Committees learned that in some instances, high-ranking DOJ and FBI officials, including the FBI General Counsel James Baker and DOJ Associate Deputy Attorney General Bruce Ohr, took the self-described “unusual” step of inserting themselves into the evidentiary chain of custody.³

During the course of our investigation we interviewed former FBI General Counsel James Baker and discovered your office is investigating him for unauthorized disclosures to the media:

Mr. Levin. [Daniel Levin, Counsel to Baker]. I'm sorry, I'm going to cut – not let him answer these questions right now. You may or may not know, he's been the subject of a leak investigation which is still – a

¹ News Release, H. Comm. on Judiciary and Oversight & Gov't Reform, Gowdy, Goodlatte Open Investigation Into Decisions Made by DOJ in 2016 (Oct. 24, 2016), <https://republicans-oversight.house.gov/release/gowdy-goodlatte-open-investigation-decisions-made-doj-2016/>.

² 50 U.S.C. § 1801 *et seq.*

³ James Baker Transcribed Interview at 53, Day 2, Oct. 18, 2018 (“It was unusual for me to be the recipient of information directly from the public or a lawyer or anyone else about an allegation of a crime.”); Bruce Ohr Transcribed Interview at 43, Aug. 28, 2018 (“Mr. Gowdy. And you can't think of a single case where you inserted yourself into a chain of custody other than this one? Mr. Ohr. That's right.”).

criminal leak investigation that's still active at the Justice Department. So I am cutting off –

Mr. Jordan. Can you speak more in the mike there?

Mr. Levin. I'm sorry. I'm cutting off any discussion about conversations with reporters.

Mr. Jordan. Based on –

Mr. Meadows. You're saying he's under criminal investigation? That's why you're not letting him answer?

Mr. Levin. Yes.⁴

...

Mr. Jordan. Just to clarify for us, you're, counsel, advising Mr. Baker not to answer that question because of – not because of it's classified, not because of any classification concerns, but because there is an ongoing investigation by whom?

Mr. Levin. The Justice Department.

Mr. Jordan. I mean, is the inspector general looking at this or is this –

Mr. Levin. No, it's Mr. John Durham, a prosecutor.

Mr. Jordan. Mr. Huber.

Mr. Levin. Durham, Durham.⁵

...

Mr. Jordan. Okay. And go back again, tell me exactly what the investigation – the reason you can't answer more specific questions about the dossier is because there's an investigation, an ongoing investigation, as we speak, looking into exactly what?

Mr. Levin. And I'm sorry. I didn't say he couldn't answer any questions about the dossier, and he just has answered some. I didn't want him

⁴ James Baker Transcribed Interview at 38-39, Day 1, Oct.3, 2018.

⁵ *Id.* at 39.

talking about interactions with reporters because there is an ongoing leak investigation that the Department is having –

Mr. Jordan. He just talked to me about his interactions with a reporter.

Mr. Levin. Well, he's talked a little bit about it, but I don't want him talking about conversations he's had with reporters because I don't know what the questions are and I don't know what the answers are right now. Given that there is an ongoing investigation of him for leaks which the Department has not closed, I'm not comfortable letting him answer questions. So in terms of getting stuff from Mr. Corn, he told you what he remembers about it.

Mr. Jordan. So he talk to me only about what Mr. Corn may have gave him via information or actual documents or recordings or anything else, but he's not allowed to talk to me about information he may have given to Mr. Corn himself?

Mr. Levin. That's right. As a general matter, that's right. I mean, if you want to ask specific questions we can figure it out. But as a general matter I'm not comfortable having him talk about things he has said to reporters while the Department still has an ongoing investigation.⁶

...

Mr. Jordan. Did any – did Franklin Foer, the guy who wrote this article, did he ever reach out to you?

Mr. Levin. I'm not going to have him answer any questions as asking about any interactions with the press.

Mr. Jordan. I'm not talking about whether he reached out to reporters. I'm asking did reporters reach out to you? So it's coming this direction.

Mr. Levin. I understand. I'm not going to have him talk about any conversations with reporters.

Mr. Jordan. Well, I think we – last time we talked about Mr. Corn pretty in-depth.

Mr. Levin. I don't believe we –

⁶ *Id.* at 42-43.

Mr. Jordan. Yes, we did.

Mr. Levin. We talked about him bringing some information in, but I don't believe we – anyway, that's – I'm not going to let him answer the questions about whether he had conversations with reporters.

Mr. Jordan. Are you going to give me the same answer when I ask did Mr. Isikoff ever reach out to you?

Mr. Levin. Yes. Same instruction to him.⁷

We are writing to request additional information about your ongoing criminal investigation of James Baker, as disclosed to the Committees by Mr. Baker's attorney.⁸

On January 11, 2019, *The New York Times* published a story describing how senior FBI officials speculated about the President's motives in terminating Director James Comey.⁹ The story described testimony given to the Committee in October by former FBI General Counsel James Baker. As the DOJ Office of Inspector General (OIG) has documented, other senior FBI officials also disclosed sensitive information to the media—most notably, former FBI Deputy Director Andrew McCabe.¹⁰ McCabe was fired for lying to the FBI's inspections division, lying to OIG investigators, and for lying to former Director James Comey about unauthorized communications with a news organization.¹¹

As we continue our oversight and investigative work, we felt it prudent to write to you seeking an update. Without being apprised of the contours of your leak investigation and Baker's role, we run the risk of inadvertently interfering with your prosecutorial plans. We have interviewed a multitude of current and former DOJ and FBI officials during our investigation and intend to continue our work in this Congress, hopefully with the support of Chairman Elijah Cummings.¹² Separately, we understand the Senate committees with jurisdictional authority are evaluating their next fact-finding steps.

To this end, we look forward to receiving your briefing sometime this month. Please contact Committee staff at (202) 225-5074 to make arrangements about this request. Thank you for your attention to this matter.

⁷ James Baker Transcribed Interview at 131-132, Day 2, Oct. 18, 2018.

⁸ See also *A top FBI lawyer is allegedly under an investigation for leaking classified information to the media*, CIRCA, (July 27, 2017), <https://www.circa.com/story/2017/07/27/politics/a-top-fbi-lawyer-is-allegedly-under-an-investigation-for-leaking-classified-information-to-the-media>.

⁹ Adam Goldman, Michael S. Schmidt and Nicholas Fandos, *F.B.I. Opened Inquiry Into Whether Trump Was Secretly Working on Behalf of Russia*, N.Y. TIMES (Jan. 11, 2018).

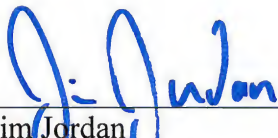
¹⁰ INSPECTOR GEN., DEP'T OF JUSTICE, *A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe*, 2, (2018).

¹¹ *Id.* at 22-23; *Statement by Attorney General on firing of FBI's McCabe*, REUTERS, March 17, 2018.

¹² Letter from Jim Jordan and Mark Meadows to Chairman Elijah E. Cummings, H. Comm. on Oversight & Reform (Jan. 9, 2019).

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Sincerely,



Jim Jordan
Ranking Member

Mark Meadows

cc: The Honorable Elijah E. Cummings, Committee on Oversight and Reform